

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

NEW BERRY INC., also doing business as)	
BERRY METAL COMPANY,)	
)	
Plaintiff,)	
)	Civil Action No. 2:18-cv-01024-PLD
v.)	
)	
TODD G. SMITH,)	
)	
Defendant.)	

PLAINTIFF BERRY METAL’S MOTION FOR LEAVE TO FILE UNDER SEAL

AND NOW COMES Plaintiff, NEW BERRY INC., also doing business as BERRY METAL COMPANY (“Berry Metal”), by and through its undersigned counsel and files the within Motion for Leave to File Under Seal:

1. This case involves claims by Berry Metal against its former employee, TODD G. SMITH (“Smith”), for, *inter alia*, Smith’s misappropriation of Berry Metal’s trade secret information and supply of that information to third parties.

2. On September 9, 2020, defendant Todd G. Smith (“Smith”) filed a Motion for Protective Order Respecting Privilege and Confidential Information” (Dkt. No. 164; the “Motion”), as well as two declarations (one from Smith and one from his counsel, Tony Handal) (Dkt. Nos. 165, 166; the “Declarations”).)

3. In order for Berry Metal to fully explain the basis of its Response in Opposition to the Motion and the Declarations (the “Response”), it is necessary for Berry Metal to discuss the contents of certain illustrative documents produced by Smith (bates-stamped SMITH 00048, 53-55), which were marked, “Confidential - Attorneys Eyes Only,” and which were previously filed under seal at docket number 115 pursuant to the April 16, 2020 Order (Dkt. No. 112).

4. In order for Berry Metal to fully explain the basis of its Response in opposition to the Motion and the Declarations, it is also necessary for Berry Metal to discuss the contents of certain other illustrative documents produced by Smith (bates-stamped SMITH 000852-000858, identified as **Exhibit 6** to Berry Metal's Response and SMITH 001437-001449, identified as **Exhibit 9** to Berry Metal's Response), which were also marked, "Confidential - Attorneys Eyes Only," (and have not previously been filed).

5. Berry Metal does not concede that all of these documents produced by Smith should be marked "Confidential" or "Attorneys Eyes Only" and the disputed designations are currently being reviewed by Smith's counsel as a result of prior status conferences with this Court

6. Third-parties, Allan MacRae ("MacRae") and MacRae Technologies Inc. ("MTI"), in joint response to subpoenas from Berry Metal, also produced 55 pages (bates-stamped MTI000001-55), comprised of emails and technical drawings.

7. MacRae/MTI likewise marked each of the pages it produced as "Confidential - Attorney Eyes Only".¹ In order for Berry Metal to fully explain the basis of its Opposition to the Motion and Declarations, it is also necessary for Berry Metal to discuss the contents of certain of these illustrative documents produced by MacRae/MTI, which were previously filed under seal at docket number 116 pursuant to the April 16, 2020 Order (Dkt. No. 112).

8. The Protective Order filed in this action at Docket No. 61 (at paragraph 21) specifies that seeking leave of court to file the documents under seal is the procedure to be used in this instance.

¹ Again, Berry Metal does not concede that all of these MacRae/MTI documents should be marked "Attorneys Eyes Only".

9. Provided that the Court grants the instant Motion, Berry Metal's counsel will await further instruction as to the filing of the Redacted Version and transmittal of the Under Seal version to the Court's Intake Clerk, with respect to **Exhibit 6** (SMITH 000852-000858) and **Exhibit 9** (SMITH 001437-001449) to Berry Metal's Response in Opposition to the Motion.

WHEREFORE Plaintiff, Berry Metal, respectfully requests that the Court enter an Order substantially in the form of the [Proposed] Order filed concurrently herewith, permitting Plaintiff Berry Metal leave to file under seal **Exhibit 6** (SMITH 000852-000858) and **Exhibit 9** (SMITH 001437-001449) to Berry Metal's Response in Opposition to the Motion.

Respectfully submitted,

CLARK HILL PLC

Dated: September 16, 2020

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CERTIFICATE OF SERVICE

I hereby certify that on September 16, 2020, the foregoing **PLAINTIFF BERRY METAL'S MOTION FOR LEAVE TO FILE UNDER SEAL** was served upon all counsel of record via the CM/ECF Electronic filing system of the United States District Court for the Western District of Pennsylvania.

/s/ Jeffrey M. Sniadanko, Esq.